

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOUGLAS EL	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	NO. 02-CV-3591
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY	:	
	:	
Defendant.	:	
	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of

Plaintiff's motion for contempt, it is hereby ORDERED and DECREED that the motion is GRANTED. Defendant Edens is directed to produce all documents responsive to the June 11, 2003 subpoena served upon it by Plaintiff within ten (10) days of the date of this Order.

BY THE COURT

Hon. J. Curtis Joyner, U.S.D.J.

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	:	

**PLAINTIFF'S MOTION FOR CONTEMPT AND TO COMPEL RESPONSE TO
SUBPOENA/DISCOVERY REQUEST**

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

1. The instant case is a class action matter.
2. On or about June 11, 2003, Plaintiff properly served a subpoena for the production of documents upon Edens Transportation. *See* attached Exhibit "A".
3. At the time the aforesaid subpoena was served, Edens had been joined as a third party defendant by Defendant SEPTA but had not yet been served or entered an appearance in this matter.
4. Defendant Edens subsequently entered an appearance and answered the joinder complaint filed by Defendant SEPTA on August 27, 2003 – well after the time set for compliance with the subpoena in question.
5. Defendant Edens failed to produce the documents requested in the subpoena.
6. Plaintiffs' counsel have made several good faith attempts to gain compliance with the subpoena (including speaking to Edens' counsel and leaving voice mail

messages for him, the most recent of which have not been returned).

7. It is respectfully submitted that Defendant Edens will not comply with the attached subpoena without a court order requiring such compliance.
8. To date, Defendant SEPTA has provided documentation indicating that at least 128 paratransit employees are potential class members (this number is expected to increase when records are provided for all years covered by the proposed class).
9. The subpoena to which Defendant Edens has failed to respond seeks various categories of information, including information relating to the number of employees or applicants rejected by Edens as a result of the SEPTA policy at issue in the instant case.
10. Plaintiff and the proposed class will be severely prejudiced without the discovery sought in the attached subpoena.
11. Federal Rule of Civil Procedure 45(e) provides that “ . . . [f]ailure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.”
12. Pursuant to the aforesaid rule and for the foregoing reasons, Plaintiff respectfully requests that the Court find Defendant Edens in contempt of the subpoena and order it to produce the documents requested in the subpoena within ten (10) days.
13. A proposed Order is attached.

Respectfully submitted,

TIMOTHY M. KOLMAN & ASSOCIATES

BY:

Timothy M. Kolman, Esquire
Counsel for Plaintiff and the Class
225 North Flowers Mill Road
Langhorne, PA 19047
(215) 750-3134

October 23, 2003